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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. LUIS HERNANDEZ Defendant and Appellant.	B272036 (Los Angeles County Super. Ct. No. LA030898)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph Brandolino, Judge. Affirmed.

Luis Hernandez, in pro. per.; and Stephen Borgo, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On March 22, 1999, Luis Hernandez pleaded no contest to voluntary manslaughter (count 1) and guilty to escape from a juvenile facility (count 3) and second degree burglary of a vehicle (count 4). (Pen. Code, § 192, subd. (a); Welf. & Inst. Code, § 871, subd. (a).)[1] The trial court imposed the upper term of 11 years for the manslaughter plus 10 years for Hernandez's use of a firearm in commission of the crime, plus a consecutive eight months for the burglary and 180 days for escaping from a juvenile facility. (§ 12022.5, subd. (a).) It awarded him 238 days of actual custody credit and 118 days of conduct credit, and further ordered that he receive a "time served sentence" as to the escape conviction. Hernandez was sentenced to a total sentence of 21 years and eight months.

Proposition 47, enacted on November 5, 2014, reduced certain nonserious and nonviolent crimes from felonies to misdemeanors. An inmate currently serving a sentence for a crime reclassified under Proposition 47 may now benefit from resentencing under the new classification of these crimes, provided he is eligible. (§ 1170.18.)

On June 2, 2015, Hernandez filed a pro se petition for resentencing under Proposition 47 as to his conviction for vehicle burglary. (§ 1170.18.) The trial court denied the petition because vehicle burglary was not reclassified by Proposition 47 as a misdemeanor. Hernandez appealed the order denying his petition.

We appointed counsel to represent Hernandez on appeal, and after examination of the record counsel filed an opening brief raising no issues and asking this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) On August 8, 2016, we sent letters to Hernandez and appointed counsel, directing counsel to forward the appellate record to

[1] All further statutory references will be to the Penal Code unless otherwise indicated.

Hernandez and advising him that within 30 days he could personally submit any contentions or issues that he wished us to consider. He filed a supplemental brief in which he challenges the sentence that was imposed in 1999 and contends the trial court erred in denying his motion for resentencing under Proposition 47.

DISCUSSION

On appeal, Hernandez contends he is eligible for resentencing because nothing in the record suggests he was convicted of vehicle burglary, which was not reclassified as a misdemeanor by Proposition 47, rather than shoplifting, which was. The argument is without merit.

Proposition 47 reclassified certain drug- and theft-related offenses as misdemeanors and provided that a defendant currently serving a sentence for a felony that would have been a misdemeanor had Proposition 47 been in effect at the time of the offense may file a petition for recall of sentence and resentencing. (§ 1170.18.) Proposition 47 also added section 459.5, which provides: "Notwithstanding Section 459 [burglary], shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950)."

Here, the original information, filed on November 24, 1998, reflects that Hernandez was charged in count 4 with second degree burglary of a vehicle. Vehicle burglary is still a felony after Proposition 47. (§ 459.) Therefore, Hernandez is ineligible for resentencing as a misdemeanant on that conviction.

Hernandez argues the information filed on November 24, 1998, which alleged vehicle burglary, was superceded by an amended information filed on

March 22, 1999, which is silent as to what type of burglary occurred. Therefore, he argues, nothing in the record establishes that he was *not* convicted of shoplifting. The argument is without merit.

On March 22, 1999, the trial court ordered that the information be amended to change count 1 from murder to voluntary manslaughter. The information was unchanged otherwise—the crime charged in count 4 remained vehicle burglary.

Hernandez contends he received an unauthorized sentence in 1999 because the trial court subtracted 180 days from his custody credit and applied it solely to his sentence for escaping a juvenile facility, which removed that custody credit from his manslaughter sentence and effectively increased it by 180 days. The argument is without merit. Hernandez appears to be misreading the sentencing order, which states: "The defendant is given a time served sentence as to count 3. Count 3 to run consecutive to count 1. *180 days custody credits deducted from total time credits as time served for count 3*." (Italics added.) However, the order also states that as to count 1, Hernandez is to receive 356 days of custody credit. The only reasonable reading of the sentence was that Hernandez was sentenced to time served on count 3 because the 180-day sentence on that count was less that his custody credit of 356 days. His full custody credit of 356 days continues to offset the manslaughter sentence.

We have independently examined the entire record and are satisfied that Hernandez's attorney has fully complied with his responsibilities. (*People v. Wende*, *supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.) No plausible basis for appeal appears in the record.

DISPOSITION

The court's order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.